



City of NORFOLK

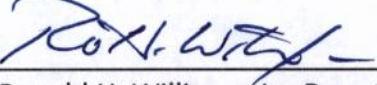
C: Dir., Department of City Planning

To the Honorable Council
City of Norfolk, Virginia

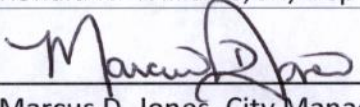
May 19, 2015

From: George M. Homewood, AICP, CFM, Planning Director

Subject: **Zoning Text Amendment to Chapter 2, "Definitions" and Chapter 22, "Variances" to amend the definition of Variance and the standards for approval of Variances – City Planning Commission**

Reviewed: 
Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: Citywide

Approved: 
Marcus D. Jones, City Manager

Item Number: **PH-5**

- I. **Staff Recommendation:** Approval.
- II. **Commission Action:** By a vote of **7 to 0**, the Planning Commission recommends **Approval**.
- III. **Request:** Text amendment to section 2-3, "Definitions" and Chapter 22, "Variances" in order to incorporate a different standard for approval as required by changes made in state law.
- IV. **Applicant:** City Planning Commission
- V. **Description:**
 - During the 2015 Session, the General Assembly passed amendments to the Code of Virginia pertaining to the operations of the local Board of Zoning Appeals.
 - These amendments require changes to be made to the City's *Zoning Ordinance* to be compliant with the revisions to the Code of Virginia pertaining to the Board of Zoning Appeals and the standards by which the Board reviews Variance requests.
 - In Chapter 2, "Definitions" of the *Zoning Ordinance* the term "Variance" would be revised to add the terms shape and height to further define the elements of a lot or a building.
 - In Chapter 22, "Variances" the phrase "unnecessary hardships" would be replaced with the phrase "unreasonable restrictions on the utilization of property."

Staff point of contact: Lenny Newcomb at 664-4764, leonard.newcomb@norfolk.gov

Attachments:

- Staff Report to CPC dated April 23, 2015 with attachments
- Proponents and Opponents
- Ordinance



City of NORFOLK

Planning Commission Public Hearing: April 23, 2015

Executive Secretary: George M. Homewood, AICP, CFM

Staff: Lenny Newcomb, CFM

Staff Report		Item No. 1
Applicant	City Planning Commission	
Request	Zoning Text Amendment	Amend Chapters 2 "Definitions" and 22 "Variances" to amend the definition of Variance and the Standards for Variances

A. Summary of Request

- During the 2015 Session, the General Assembly passed amendments to the Code of Virginia pertaining to the operations of local Board of Zoning Appeals.
- These amendments require changes to be made to the City's *Zoning Ordinance* to be compliant with the revisions to the Code of Virginia pertaining to the Board of Zoning Appeals and the standards by which the Board reviews variance requests.

B. Zoning Analysis

- In Chapter 2: "Definitions" of the *Zoning Ordinance* the term variance would be revised to add the terms shape and height to further define the elements of a lot or a building that may be considered when the Board of Zoning Appeals reviewing a variance request.
- Currently the purpose statement of Chapter 22, "Variances", states that "The variance procedures are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of this ordinance that create unnecessary hardships".
- The phrase "unnecessary hardships" would be replaced with the phrase "unreasonably restrict the utilization of the property".
- There are several other minor revisions, including reformatting necessary to comply with the changes. (See Exhibits A and B)

D. Communication Outreach/Notification

Legal notification was placed in *The Virginian-Pilot* on April 9 and 16.

E. Recommendation

Staff recommends that the zoning text amendment be **approved**.

Attachments:

Exhibit A

Exhibit B

Proponents and Opponents

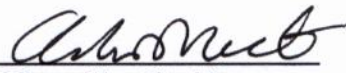
Proponents

None

Opponents

None

Form and Correctness Approved:

By 
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By 
DEPT.

ORDINANCE No.

AN ORDINANCE TO AMEND SECTION 2-3 AND CHAPTER 22 OF THE ZONING ORDINANCE OF THE CITY OF NORFOLK, 1992, SO AS TO INCORPORATE A DIFFERENT STANDARD FOR APPROVAL OF A VARIANCE AS REQUIRED BY CHANGES MADE TO STATE LAW.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Section 2-3 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), entitled "Definitions," is hereby amended and reordained so as to modify the definition for "Variance" to reflect changes made to state law. The revised definition shall read as forth in "Exhibit A," attached hereto.

Section 2:- That Chapter 22 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), entitled "Variances," is hereby amended and reordained so as to incorporate a different standard for approval of a variance as required by changes made to state law and to update state code references to match current statutory numbering. The text shall read as set forth in "Exhibit B," attached hereto.

Section 3:- The Council hereby finds that this zoning amendment is required by public necessity, convenience, general welfare, or good zoning practice.

Section 4:- That this ordinance shall be in effect from and after July 1, 2015.

ATTACHMENTS:

Exhibit A (1 page)

Exhibit B (6 pages)

EXHIBIT A

2-3 Definitions.

For the purposes of this ordinance, the following terms shall have the following meanings.

...

Variance. A reasonable deviation from those provisions regulating the shape, size or area of a lot or parcel of land, or the size, height, area, bulk or location of a building or structure under this ordinance and authorized according to the procedures set forth in Article IV, Chapter 22.

...

EXHIBIT B

22-1 Purpose statement.

The variance procedures are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of this ordinance that create unreasonable restrictions on the utilization of property. When such unreasonable restrictions may be more appropriately remedied, if at all, pursuant to other provisions of this ordinance, the variance procedure is inappropriate.

22-2 Scope of authority.

The board of zoning appeals, pursuant to its authority under section 15.2-2309 of the Code of Virginia, shall grant variances from the provisions of this ordinance, but only in compliance with the procedures set forth in section 22-4 and under the specific circumstances described in section 22-5 and then only in accordance with each of the standards enumerated in section 22-6.

22-3 Parties entitled to seek variances.

Applications for variances may be filed on forms approved by the board by any person having a legal or equitable interest in the property affected.

22-4 Procedures.

22-4.1 Application. An application for a variance shall be filed with the zoning administrator and shall include the following items and information unless determined inapplicable by the zoning administrator:

Written information.

- (a) The property owner's name and address and the owner's signed consent to the filing of the application.
- (b) The applicant's name and address, if different than the owner, and his interest in the subject property.
- (c) The names and addresses of all professional consultants, if any, advising the applicant with respect to the application.
- (d) The address and legal description of the subject property.

Descriptive and graphic information.

- (e) A survey, certified by a registered land surveyor, showing existing lot lines and dimensions as well as lot area, all easements, all public and private rights-of-way and all streets across and adjacent to the subject property; if the property is located within the Chesapeake Bay Preservation Area Overlay District, then the survey shall also conform to the requirements of Article II, Chapter 11.
- (f) A description or graphic representation of the existing zoning classification, use and development of the subject property and the adjacent area for at least 250 feet in all directions from the subject property. The scope and detail of such description shall be appropriate to the subject matter of the application, with special emphasis on those matters likely to be affected or impacted by the approval being sought in the application.
- (g) A description or graphic representation of any development or construction that will occur or any use that will be established or maintained if the requested relief is granted.
- (h) A table showing the following:
 - (1) The total lot area of the subject property, in acres and in square feet; and
 - (2) The existing and proposed:
 - (aa) Number of dwelling units, by number of bedrooms and dwelling unit gross floor area; and
 - (bb) Gross and net floor area devoted to residential uses, commercial uses, office uses, industrial uses and institutional uses.
- (i) A table listing all bulk, space and yard requirements; and all parking and loading requirements applicable to any proposed development or construction and showing the compliance of such proposed development or construction with each such requirement. Where any lack of compliance is shown, the reason therefor shall be stated.

Variance information.

- (j) The specific feature or features of the proposed use, construction or development that require a variance.

- (k) The specific provision of this ordinance from which the variance is sought and the precise variance therefrom being sought.
- (l) A statement of the characteristics of the subject property that make compliance with the provisions of this ordinance unreasonable.
- (m) A statement of the minimum variation of the provisions of this ordinance that would be necessary to permit a reasonable use, construction or development of the property.
- (n) An explanation of how the application satisfies each standard set forth in section 22-6.

22-4.2 *Procedure for variances.* Applications for variances shall be reviewed and decided by the board of zoning appeals in accordance with the following procedure:

- (a) *Public hearing.* Upon receipt of a complete application for a variance, the board of zoning appeals shall hold a public hearing with notice in accordance with the provisions of section 15.2-2204 of the Code of Virginia.
- (b) *Action by board of zoning appeals.* Following the close of the public hearing the board of zoning appeals shall render its decision, granting or denying the variance pursuant to the standards and procedures set forth in sections 22-6 and 22-7. A decision by the board to grant a variance shall not take effect until thirty (30) days after the date of the hearing to permit an appeal of the decision to be filed in accordance with section 21-5.

22-4.3 *Special procedures in connection with other applications.* Whenever it is determined that a variance is needed in addition to a zone change, special exception, or certificate of appropriateness, the zoning administrator shall not accept an application for such variance until a final approval has been rendered by the planning commission or the city council, as applicable.

22-5 Prohibited variances.

Notwithstanding any other provision of this chapter, no variance shall be granted that:

- (a) Is intended as a temporary measure only;
- (b) Is greater than the minimum variation necessary to relieve the unreasonable restriction on the utilization of the property demonstrated by the applicant; or

- (c) Authorizes a change in use.

22-6 Standards for variances.

Subject to the prohibitions set forth in section 22-5 above, and subject to the other provisions of this chapter, the board of zoning appeals shall grant a variance when the evidence shows that all of the following tests are satisfied:

- (a) *Unreasonable restriction or hardship.* Due to a physical condition relating to the property or improvements thereon at the time of the effective date of the zoning ordinance, either:
 - (1) The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or
 - (2) the granting of the variance would alleviate a hardship.
- (b) *Good faith.* The property interest for which the variance is requested was acquired in good faith and no hardship was created by the applicant for the variance.
- (c) *No detriment to nearby properties.* The granting of the variance will not be of substantial detriment to adjacent or nearby properties.
- (d) *Unique condition of the property.* The condition or situation of the subject property is not of so general or recurring a nature as to make reasonably practicable the formation of a general regulation to be adopted as an amendment to the ordinance to remedy the unreasonable restriction or hardship.
- (e) *No impermissible use.* The granting of the variance will not result in either:
 - (1) A use occurring on the property that is not otherwise permitted in the district; or
 - (2) A change in the zoning classification of the property.
- (f) *Other remedies not available.* The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance pursuant to subdivision A4 of Code of Virginia section 15.2-2286.

22-7 Special findings for Chesapeake Bay Overlay District properties.

No variance shall be authorized by the board of zoning appeals unless the standards set forth in section 22-6 are satisfied and furthermore that the board finds all of the following:

- (a) That the applicant has minimized the proposed encroachment within existing required yard setbacks.
- (b) That the applicant has minimized encroachment into the buffer area through architectural design and the use of alternative paving and/or construction materials.
- (c) That the effect of the encroachment on existing vegetation within the buffer area will not decrease the water quality benefit derived from the buffer area.
- (d) That, if applicable, the applicant has provided evidence that deed restrictions and covenants pertaining to minimum building square footage were recorded prior to the effective date of the Chesapeake Bay Preservation Overlay District.
- (e) That, if practicable, an adjacent low-maintenance landscaped area equivalent in size to the buffer encroachment is provided on the site.

22-8 Appeal.

Any person aggrieved by the decision of the board of zoning appeals may appeal the decision pursuant to the provisions of this Article IV, Chapter 21, section 21-5.

22-9 Variance less than requested.

A variance less than or different than that requested may be authorized when the record supports the applicant's right to some relief but not to the relief requested.

22-10 Conditions on variances.

In granting a variance, the board of zoning appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with. Violation of any such condition or limitation shall be a violation of this ordinance and shall constitute grounds for revocation of the variance.

22-11 Effect of grant of variance.

The grant of a variance shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure but shall merely authorize the preparation, filing and processing of applications for any permits and approval that may be required by the regulations of the city, including, but not limited to, a

zoning certificate, a building permit, a certificate of occupancy, subdivision approval, and site plan approval.

22-12 Limitations on variances.

Subject to an extension of time granted upon application to the board of zoning appeals, no variance shall be valid for a period longer than six months unless a building permit is issued and construction is actually begun within that period and is thereafter diligently pursued to completion or unless a certificate of occupancy is issued and a use is commenced within that period.

A variance shall be deemed to authorize only the particular construction or development for which it was issued and shall automatically expire and cease to be of any force or effect if such construction or development shall be removed and not replaced within two years following such removal.